IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Crl.MC.No. 3604 of 2006()

CP.92/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHALAKUDY

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PETITIONER: ACCUSED:

BAIJU P.I., S/O. ITTIRAH,
PERAPPADAN HOUSE, KUTHIRATHADOM, KOTTANELLOOR P.O.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: COMPLAINANT & STATE:

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1. SUB INSPECTOR OF POLICE, MALA.

2. JAMEELA, W/O. ABDUL RASHEED,
MANKIDAMOOLAKIZHAKKU, PUTHENCHIRA, MALA.

3. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 & 3 BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
R2 BY ADV. SRI.A.MUHAMMED HASHIM

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3604 of 2006

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Dated this the 31st day of January, 2007

O R D E R

The petitioner is the second accused in a prosecution initiated under Sections 447, 323, 354 and 377 r/w. 34 I.P.C. The petitioner was originally shown as the first/sole accused in the crime. After registration of the F.I.R., the petitioner had come to this Court with a prayer to invoke the powers under Section 482 Cr.P.C. to quash the F.I.R. registered against him. By Annex.A4 order dt. 29.8.2005 in Crl.M.C.No. 3928 of 2002 this court disposed of the said petition. The submission of the parties that the matter has been settled was accepted and the parties were permitted to move the learned Magistrate for composition.

2. The petitioner allegedly went before the learned Magistrate to make the prayer for composition. He then realised that the final report has been filed not against him alone but against two accused persons. He is now the 2nd accused and another is arrayed as the first accused. He further found that in addition to the allegations raised under Sections 447, 323 and 354 I.P.C. (all compoundable), a further allegation has been raised against him under Section 377 r/w. 34

I.P.C. The petitioner could not hence get the case against him compounded. The learned Magistrate had registered the said case as C.P. 92 of 2006. It is not known how the case is registered as a committal proceedings. The offences alleged fall only under Sections 447, 323, 354 and 377 r/w. 34 I.P.C. All offences are offences triable by the Magistrate and I must assume that the submission made by both sides that the case is registered as a committal proceedings (C.P. 92/06) is correct factually, but such registration is done obviously on the basis of some mistaken impression.

3. The petitioner has come to this Court with a prayer that the proceedings against him may be quashed. He submits that the offences under Sections 447, 323 and 354 have all been compounded. To thwart the attempt of the party to compound the matter, an allegation under Section 377 I.P.C. has been incorporated in the final report submitted by the police against him. The learned counsel for the petitioner submits that the very inclusion of the allegation under Section 377 r/w. 34 I.P.C. against the petitioner is unnecessary and unwarranted and amounts to abuse of the process of the court. The composition of the compoundable offences may be accepted and it may be held that the inclusion of Section 377 r/w. 34

I.P.C. as against the petitioner is most unjustified and improper, submits the learned counsel for the petitioner.

4. The respondent/victim has entered appearance through counsel. She has filed a petition supported by an affidavit, in which she has made a categoric assertion that all the offences under Sections 337, 323 and 354 I.P.C. have been compounded and that she had never intended to raise any allegation against the petitioner herein at any time - of his having committed the offence under Section 377 r/w. 34 I.P.C.

5. The case diary has been placed before me for my perusal. I have been taken through the F.I. statement, wherein there is not a semblance of allegation that the petitioner was guilty of any offence punishable under Section 377 I.P.C. either personally or vicariously. I have also been taken through the allegations raised in the final report, which shows that after the alleged overt acts by the petitioner against the victim, she was taken to another place by the co-accused, where she was subjected to unnatural sexual intercourse.

6. The learned Prosecutor has been heard. No serious objection is raised against the acceptance of the composition and quashing of

proceedings against the petitioner so far as it concerns the offence under Section 377 r/w. 34 I.P.C.

7. Having considered all the relevant inputs, I am satisfied that this is an eminently fit case where powers under Section 482 Cr.P.C. can and ought to be invoked to quash the proceedings against the petitioner initiated on the basis of the final report submitted by the police in Crime No.122 of 2002 of Mala police station under Section 447, 323, 354 and 377 r/w. 34 I.P.C., which, it is seen is numbered by the learned Magistrate erroneously as a committal proceedings No. 92 of 2006.

6. This Crl.M.C. is accordingly allowed. The proceedings against the petitioner in C.P. 92 of 2006 (on the basis of the final report submitted in Crime 122 of 2002) is hereby quashed.

(R. BASANT)
Judge

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